

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

George Martinez,
Plaintiff,
-v-
Triumph Construction Corp., and
Top Set Trucking, LLC,
Defendants.

Civ. Action #: 21-CV-04137
(JPO)(SDA)

**Plaintiff's Declaration in
Opposition to Defendants'
Motion to Dismiss**

I, George Martinez, declare pursuant to 28 U.S.C. § 1746, under penalty of perjury that the following declaration is true and correct to the best of my understanding and knowledge:

1. I am the Plaintiff George Martinez ("Plaintiff" or "Martinez") in the above-entitled action.
2. I make this declaration in opposition to the motion to dismiss of Defendants Triumph Construction Corp. ("Triumph"), and Top Set Trucking, LLC ("Top Set") (collectively "Defendants").
3. As set forth in my complaint, I was employed by Defendants from in or around 2016 to on or about March 4, 2020 with the exception of an approximate 9-month period in 2016-2017.
4. It is my understanding that I am not allowed to testify about the issues at this stage of the case, but I am submitting this declaration to verify and introduce the text messages attached hereto as Exhibit 1. The text messages attached hereto as Exhibit 1 are true and correct copies of text messages that were sent to me by Mr. Dominick Cuzzi on May 18, 2021. Mr. Dominick Cuzzi was an owner/manager of Defendant Triumph – based on my years working for Defendant Triumph, it is my understanding that Defendant Triumph is owned and operated by Mr. Carlo Cuzzi and his sons Michael Cuzzi and Dominick Cuzzi.

5. The text message in Exhibit 1 displays the name "Work Dimick" – this refers to Mr. Dominick Cuzzi from my work and employment with Defendants.

6. My attorney will be handling all the legal matters, arguments and points.

7. I kindly ask that the Court deny in its entirety Defendants' motion to dismiss.

I declare pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing declaration is true and correct to the best of my understanding and knowledge.

Dated: 8/30/2021

DocuSigned by:

George Martinez (Plaintiff)

Exhibit 1

12:05 ▲ M W M

81% 🔋

< Work Dimick
9147551963



Tuesday, May 18, 2021

W

1/3 Good morning George,
We have gone through your
2019 documents and the
bosses recognize they have
made a mistake on your OT
payments.

The total is believed

10:24 AM

W

2/3 It is believed to be just under \$400.
We'd like to understand where
you're going with your suit. You
can drop your suit before it hits
Top Set and it can be settled

3/3 by paying your wages
owed.
Both Top Set and yourself will
be paying lawyers for no appar-
ent reason. You'll probably pay
more than you'll receive.

Let us know your decision so
this can be settled.
I appreciate your time and
cooperation. Apologize for
the errors made.

10:25 AM

